



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 3722
Examiner : Jamila O. Williams
Serial No. : 09/711,194
Filed : November 13, 2000
Inventors : Casey William Norman
 : Torquil Patrick Alexander Norman
Title : DOLL'S CLOTHING AND PLAY SET

Customer No.: 035811

Docket No.: 1391-CIP-00

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Dated: January 4, 2006

APPEAL BRIEF

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants have appealed from the final rejection of Claims 1, 3-16, 18, 20 and 21 on April 7, 2005. The Appellants submit this Appeal Brief with a check in the amount of \$500.00 under 41 CFR §41.20(b)(2).

REAL PARTY IN INTEREST

The real party in interest, by Assignment recorded in the USPTO records at Reel 011519 and Frame 0114 is Genie Toys, PLC, a corporation of the United Kingdom located at 25 Imperial Square, Cheltenham, Gloucestershire GL50 1QZ, United Kingdom.

RELATED APPEALS AND INTERFERENCES

Appellants filed a Notice of Appeal on July 12, 2005 for U.S. Patent Application Serial No. 09/844,322 filed on April 26, 2001.

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STATUS OF THE CLAIMS

Claims 1, 3-16, 18, 20 and 21 are rejected and on appeal. Claims 2, 17 and 19 were canceled without prejudice and without disclaimer of the subject matter thereof. Claims 1, 6, 10, 13, 15, 20, and 21 are independent claims.

STATUS OF THE AMENDMENTS

The following Amendments and Response are of record: an Amendment filed on June 10, 2002 in response to the Non-final Official Action dated March 8, 2002; an Amendment filed March 21, 2003 in response to the Non-final Official Action dated September 25, 2002; an Amendment filed October 31, 2003 in response to the Non-final Official Action June 18, 2003; an Amendment filed June 14, 2004 in response to the Final Official Action dated March 5, 2004; a Request for Continued Examination filed August 3, 2004 in response to an Advisory Action dated July 16, 2004; an Amendment filed January 5, 2005 in response to the Non-final Official Action dated October 19, 2004; and a Notice of Appeal filed July 1, 2005 in response to the Final Official Action dated April 7, 2005. A copy of the claims as they now stand is provided in the attached Appendix.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter relates to a seamless doll's skin comprising a seamless, injection molded elastomeric material sized and shaped to approximate the size and shape of at least a portion of a doll that is at least partially bendable or articulated which repeatedly covers and is removed from the doll and transforms the doll into a different character or object, has a wall thickness from 1 to 3mm, has a through hole to accommodate passage of a doll's head or

limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 6, line 19 to page 7, line 5; page 7, lines 6-13 and page 7, line 19 to page 8, line 20; and the Figures).

The claimed subject matter also relates to a seamless doll's skin comprising a seamless, injection molded elastomeric material which covers and is removed from at least a portion of a doll that is at least partially bendable or articulated and transforms the doll into a different character or object, wherein the elastomeric material has a 100% modulus of elasticity between about 120 and 350KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 6, line 19 to page 7, line 5; page 7, lines 6-13 and page 7, line 19 to page 8, line 20; and the Figures).

The claimed subject matter further relates to a seamless doll's garment comprising a seamless, injection molded elastomeric material having a molded shape to repeatedly fit over and removed from a doll having a height in the range of above 8cm to about 20cm, has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at articulation locations of the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 7, line 19 to page 8, line 20; page 10, lines 4-14 and the Figures).

The claimed subject matter still further relates to a doll's skin comprising a seamless, injection molded elastomeric material which covers and is removed from at least a portion of a doll that is at least partially bendable or articulated and transforms the doll into a different character or object, and wherein the elastomeric material has a 100% modulus of elasticity between about 120 and 350KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of

the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 6, line 19 to page 7, line 5; page 7, lines 6-13 and page 7, line 19 to page 8, line 20; and the Figures).

The claimed subject matter also relates to a play set comprising, in cooperative combination, a doll that is at least partially bendable or articulated having a height in the range of 8 cm to about 20 cm, donned and fitted with a seamless synthetic polymer injection molded garment which removeably encloses around at least a portion of the doll and is adapted to be removed, dressed and refitted again to the doll wherein the synthetic polymer has a 100% modulus of elasticity between about 120 and 350KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 6, line 19 to page 7, line 5; page 7, line 19 to page 8, line 20; page 10, lines 4-14 and the Figures).

The claimed subject matter further relates to a seamless doll's garment comprising a seamless, injection molded elastomeric material sized and shaped to approximate the size and shape of at least a portion of a doll that is at least partially bendable or articulated which is repeatedly fitted over and removed from the doll, has a wall thickness from 1 to 3mm, has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 7, lines 6-13; page 7, line 19 to page 8, line 20; and the Figures).

The claimed subject matter yet further relates to a seamless doll's garment comprising a seamless, injection molded elastomeric material sized and shaped to approximate the size and shape of at least a portion of a doll that is at least partially bendable or articulated which is

repeatedly fitted over and removed from the doll, wherein the elastomeric material has a 100% modulus of elasticity between 120 and 350KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. (See the Specification at page 4, lines 13-22; page 6, lines 10-11; page 6, line 19 to page 7, line 5; page 7, line 19 to page 8, line 20; and the Figures).

GROUND OF REJECTION

Claims 1, 3-18, 20 and 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 20-23 and 25-51 of co-pending U.S. Application No. 09/844,322.

Claims 1, 3-5 and 20 are rejected under 35 U.S.C. §103(a) over Yasuda (U.S. Patent No. 5,928,803) in view of Erickson (U.S. Patent No. 4,297,153), Heppenstall (U.S. Patent No. 5,194,034) or Fogarty (U.S. Patent No. 4,414,774).

Claims 6-11, 13-14 and 21 are rejected under 35 U.S.C. §103(a) over Yasuda (U.S. Patent No. 5,928,803).

Claim 12 is rejected under 35 U.S.C. §103(a) over Yasuda (U.S. Patent No. 5,928,803) in view of Fogarty (U.S. Patent No. 4,414,774).

Claims 1, 3-5 and 9 are rejected under 35 U.S.C. §103(a) over Fogarty (U.S. Patent No. 4,414,774) in view of Yasuda (U.S. Patent No. 5,928,803).

Claim 15 is rejected under 35 U.S.C. §103(a) over Fogarty (U.S. Patent No. 4,414,774) in view of Yasuda (U.S. Patent No. 5,928,803).

Claims 16-18 are rejected under 35 U.S.C. §103 over Fogarty (U.S. Patent No. 4,414,774) in view of Yasuda (U.S. Patent No. 5,928,803) and further in view of Gross (U.S. Patent No. 5,913,708).

Claims 1, 7, 8, 10, 15, 16 and 20 are rejected under 35 U.S.C. §103(a) over Kramer (U.S. Patent No. 5,607,339) in view of O'Brian et al. (U.S. Patent No. 2,944,368) and either Gross (U.S. Patent No. 5,913,708) or Wion (U.S. Patent No. 4,294,036).

Claims 3, 4, 5, and 12 are rejected under 35 U.S.C. §103(a) over Kramer (U.S. Patent No. 5,607,339) in view of O'Brian (U.S. Patent No. 2,944,368) and either Gross (U.S. Patent No. 5,913,708) or Wion (U.S. Patent No. 4,294,036) and further in view of Yasuda (U.S. Patent No. 5,928,803).

ARGUMENT

Provisional Double Patenting Rejection

The Appellants acknowledge the provisional obviousness-type double-patenting rejection of Claims 1 and 3-18 over U.S. Patent Application No. 09/844,322. This is a provisional rejection. The Appellants requested that this rejection be held in abeyance. The Appellants, therefore, will not further address that provisional rejection in this Brief.

Rejection of Claims 1, 3-5 and 20 under 35 U.S.C. §103(a)

Claims 1, 3-5 and 20 are rejected under 35 U.S.C. §103(a) over Yasuda in view of Erickson, Heppenstall or Fogarty.

The rejection states that Yasuda discloses a seamless doll's skin or garment (and refers to Fig. 1 for support) which comprises a seamless, molded elastomeric material (and points to

column 3, lines 18-54 of the Yasuda Specification). The rejection states that the seamless doll or garment is adapted to be repeatedly dressed, fitted over and removed from a doll to transform the doll into a different character or object which is inherently capable of that function. The rejection also states that Yasuda discloses flexibility to bend at bending locations of the doll and an elastic material that is a synthetic polymer which is a copolymer consisting of ethylene-vinyl acetate copolymer. Support is stated as being located at column 3, lines 24-25. The rejection admits, however, that Yasuda does not disclose having a hole to accommodate the passage of a doll's head/limbs.

The Appellants disagree with this characterization of Yasuda. For example, with respect to Claim 1, it specifically claims a seamless doll's skin. That doll's skin is specifically claimed to transform the doll into a different character or object. The Appellants respectfully submit that Yasuda utterly fails to disclose, teach or suggest a seamless doll's skin that transforms a doll into a different character or object. There is not one word of disclosure that teaches or suggests this in Yasuda. The Appellants also disagree that Yasuda provides any disclosure that would lead one of ordinary skill in the art to believe that the transformation of the doll into a different character or object is inherent in the Yasuda disclosure. That position is nothing more than speculation unsupported by the record.

The Appellants note with appreciation the Examiner's frank admission that there is no hole to accommodate a doll's head or limbs in Yasuda. The Appellants fully agree. However, the Appellants also note that there is utterly no disclosure in Yasuda with respect to the doll's skin being sufficiently flexible and elastic to bend at bending or articulation locations of a doll. Instead, Yasuda discloses a variety of laminates that are deformable. However, there is nothing that discloses, teaches or suggests that such laminates are both flexible and elastic to a degree

sufficient to bend at bending or articulation locations of the doll. Again, this is mere speculation unsupported by the record.

Another problem with Yasuda is the utter failure to disclose, teach or suggest the doll's skin having the claimed wall thickness of 1-3 mm. Again, there is simply nothing in Yasuda that teaches or suggests such a thickness. Instead, Yasuda teaches a wide variety of very different thicknesses of a laminate that are no where remotely close to the claimed wall thickness.

With respect to Claim 20, Yasuda utterly fails to disclose, teach or suggest a seamless doll's garment. In sharp contrast, Fig. 1, which the rejection specifically refers to, shows at least two seams in the disclosed laminate. In fact, all of the laminates of Yasuda as shown in the nineteen figures include at least one seam and, in a number of cases, include up to four seams. As a consequence, Yasuda is utterly inapplicable to Claim 20 on this point alone. As noted above with respect to Claim 1, Yasuda utterly fails to disclose, teach or suggest the claimed wall thickness of 1-3 mm. Further, as also noted above, the Official Action admits that Yasuda fails to disclose, teach or suggest a through hole to accommodate passage of a doll's head or limbs.

Finally, as noted above, Yasuda utterly fails to disclose, teach or suggest that the claimed garment is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. The laminates of Yasuda are disclosed as being deformable, but there is nothing that suggests that they are both flexible and elastic in a manner sufficient to bend at bending or articulation locations of a doll as recited in Claim 20.

The rejection relies on Erickson, Heppenstall and Fogarty to cure the admitted failure of Yasuda to disclose a through hole to accommodate passage of a doll's head or limb.

The Appellants agree that Erickson discloses through holes to at least accommodate passage of dolls' limbs. However, even if one or ordinary skill in the art were to hypothetically

combine Erickson with Yasuda, the resulting combination would still fall far short of the subject matter of Claim 1. For example, there would still be an utter failure to disclose, teach or suggest a doll's skin that transforms the doll into a different character or object. Instead, the result would be a doll's garment, but not a skin that actually transforms the doll into a different character or object. The doll would still have the same basic features, but with garments. However, the character or object would still be the same.

As another more important point, however, the resulting combination would still utterly fail to disclose, teach or suggest the claimed wall thickness of 1-3 mm. That is because Erickson is utterly devoid of the mention of any thicknesses, much less the claimed thicknesses while Yasuda teaches thicknesses that actually lead those of ordinary skill in the art away from the claimed thickness of 1-3 mm. Instead, Yasuda provides a multiplicity of examples which specifically set forth the thicknesses of the individual layers comprising a laminate. Those thicknesses are set forth in the chart below for the Board's convenience.

Example	Overall thickness (μm , or mm^{-3})
1	100
2	115
3	150
4	70
6	65
7	85
8	85
9	125
10	150
11	100
12	92
13	92
14	75
15	75
16	92
17	100
18	100
19	120

Example	Overall thickness (μm , or mm^3)
23	100
24	100

It is clear from these examples that the laminate thickness of Yasuda ranges between 65 μm all the way up to 150 μm . In sharp contrast, Claim 1 recites a wall thickness of 1 to 3 mm. The equivalent thickness is 1,000 μm to 3,000 μm . This is because the Yasuda laminate is for decorative purposes with no structural functionality. As a consequence, even one of ordinary skill in the art were to hypothetically combine Erickson with Yasuda, the resulting product would still be not even close to the claimed range.

The hypothetical combination would also not apply to Claim 20 for the same reason, namely that the resulting thickness of a doll's garment formed by hypothetically combining Erickson with Yasuda would still lead one of ordinary skill in the art to a doll's garment having thicknesses far different from that claimed in Claim 20.

Further with respect to Claims 1 and 20, the hypothetical combination would still fail to teach or suggest that the doll's skin (in the case of Claim 1) or the doll's garment (in the case of Claim 20) would be sufficiently flexible and elastic to bend at bending or articulation locations of the doll. Neither of Yasuda or Erickson discloses, teaches or suggests that the dolls upon which the garments of those two references are to be applied have articulation locations. Therefore, it would be nothing more than speculation to assert that the doll's skin and/or the doll's garment would be both sufficiently flexible and elastic to bend at bending or articulation locations of a doll.

Finally, both Claims 1 and 20 specifically recite that the doll's skin and/or garment is seamless. The Appellants have already demonstrated that the laminates of Yasuda have seams. Laminates inherently have seams. Thus, even if one of ordinary skill in the art were to supply

the though holes of Erickson to the laminates of Yasuda, the resulting doll's garment (but not doll's skin as specifically recited in Claim 1) would still fail to teach or suggest a seamless doll's garment or a seamless doll's skin.

The Appellants accordingly respectfully request reversal of the rejection as it applies to the hypothetical combination of Erickson with Yasuda.

The Appellants respectfully submit that the hypothetical combination of Heppenstall and Fogarty with Yasuda also fails to teach or suggest the subject matter of Claims 1, 3-5 and 20. In fact, the Appellants respectfully submit that Heppenstall and Fogarty are further afield than Erickson. While the Appellants agree that Heppenstall and Fogarty disclose through holes to accommodate passage of a doll's head or limbs, Heppenstall and Fogarty fail to provide any additional teachings or even the same degree of relevant teachings as Erickson. Therefore, all of the reasons set forth above with respect to the hypothetical combination of Erickson with Yasuda apply with equal force to the hypothetical combination of Heppenstall and Fogarty with Yasuda.

The Appellants respectfully submit that the most compelling of the failures of Heppenstall, Fogarty and Yasuda is the failure of a combined Heppenstall/Fogarty/Yasuda product to teach or suggest the claimed wall thickness of 1-3 mm. In fact, the Appellants respectfully submit that the resulting Heppenstall/Fogarty/Yasuda product would have a wall thickness far different from the claimed wall thickness. Therefore, the Appellants respectfully request that the rejection as it applies to the hypothetical combination of Heppenstall and Fogarty with Yasuda be reversed as well.

Rejection of Claims 6-11, 13-14 and 21 under 35 U.S.C. §103(a)

Claims 6-11, 13-14 and 21 are rejected under 35 U.S.C. §103 over Yasuda. The Appellants agree with the Examiner that Yasuda fails to disclose the claimed modulus of elasticity. However, the Appellants respectfully submit that it is merely speculation to take the position that it would be obvious to utilize the claimed modulus of elasticity in the absence of any teachings or suggestions to do so.

Careful scrutiny of the entire disclosure of Yasuda reveals that there is not one word concerning modulus of elasticity. Moreover, inasmuch as the laminate of Yasuda is merely a constituent element of dolls or clothes of dolls, elasticity, in the context in which it is utilized herein, is essentially unimportant. Moreover, to the extent that there is an issue of deformability in Yasuda, Yasuda provides very specific teachings as to how to achieve such deformability. This is achieved by utilization of individual layers that have different coefficients of thermal expansion/contraction of the various resin layers at different rates, thereby willfully and deliberately causing deformation. In sharp contrast, Claims 6-11, 13-14 and 21 utilize a specifically claimed modulus of elasticity to achieve the desired amount of elasticity.

Thus, while Yasuda teaches a variety of materials laminated to each other which may have a variety of moduli of elasticity, it would be purely speculative to guess what the ultimate modulus of elasticity of the resulting laminate would be. Further, it would add yet another layer of speculation to determine what the ultimate modulus of elasticity of the “clothing for dolls” is by virtue of the further addition of fabrics having been bonded to the outermost resin layer. The paucity of disclosure on this point actually renders Yasuda non-enabling as effective prior art against the subject matter of Claims 6-11, 13-14 and 21.

Moreover, the fact that the Yasuda laminate has a modulus of elasticity is irrelevant. Every material has a modulus of elasticity. However, Yasuda does not provide any teachings or suggestions that would lead one of ordinary skill in the art to the claimed modulus. It is simply unsupported speculation as to what the modulus of the Yasuda laminates might be, and such speculation cannot support a rejection under 35 U.S.C. §103(a).

Even if one were to hypothetically attribute a modulus of elasticity to Yasuda, simply because a material is elastomeric does not mean that it has a 100% modulus of elasticity between 120 and 350 KN/m². It would be nothing more than mere speculation, completely unsupported by facts on the record, that the laminate of Yasuda has a 100% modulus of elasticity between 120 and 350 KN/m². In fact, one of ordinary skill in the art would likely believe that the modulus would be outside of the claimed range inasmuch as Yasuda employs at least two layers and, in most instances, three layers. The modulus of the Yasuda laminates is completely speculative since Yasuda does not disclose, teaching or suggest what the modulus would likely be.

As noted above, Yasuda is concerned with distortion, not stretching, and therefore pays no attention at all to the modulus. One of ordinary skill in the art would not look to a particular modulus of elasticity to achieve overall elasticity in deformability as a consequence of looking to Yasuda. Instead, one of ordinary skill in the art would at best take a sharply different path if looking to Yasuda by utilizing multiple layers of resins having different coefficients of thermal expansion to form a laminate that is deformable based on temperature differences. The Appellants have no concern with respect to such an approach and the claimed modulus of elasticity is nowhere disclosed, taught or suggested by Yasuda. Again, Yasuda goes in a completely different direction leading one of ordinary skill in the art away from that claimed aspect.

Yasuda also fails to teach or suggest the subject matter of Claims 6-11, 13-14 and 21 wherein the elastomeric material has a through hole to accommodate passage of a doll's head or limb(s). Instead, Yasuda discloses a multi-layered sheet. There is nothing in Yasuda concerning a through hole to accommodate passage of a doll's head or limb, and such a through hole is not inherent in the disclosure of Yasuda. There are multiple references on this record that already show various types of dolls clothes that do not contain such through holes. In that regard, the Appellants invite the Board's attention to U.S. 2,944,368 which discloses various dolls structures and associated clothes that do not have through holes. Therefore, the disclosure by Yasuda of a multi-layer sheet in no way makes a through hole inherent in such a sheet.

In addition, Yasuda fails to disclose, teach or suggest a seamless, injection-molded elastomeric material. Yasuda is quite clear that his laminate contains multiple layers. Laminates inherently contain multiple layers as previously noted. Those multiple layers inherently contain seams. Claims 6-11, 13-14 and 21 recite that either the doll's garment or the doll's skin comprises a seamless, injection molded elastomeric material. Yasuda does not disclose, teach or suggest such a claimed structure. In sharp contrast, Yasuda discloses a structure that is a laminate formed of multiple layers which inherently contains seams. In fact, the Figures of Yasuda show the presence of seams. For example, Figs. 1-3 of Yasuda show, in each case, two seams in the Yasuda laminate, Figs. 6, 7, 8, 9, 15 and 16-18 all show two seams, Figs. 5 and 19 show one seam, and the remaining figures show more than two seams. The fundamental essence of Yasuda is a laminate material that inherently contains seams, which are shown in each of the Yasuda Figures.

The Appellants agree that Yasuda states "clothes of dolls." However, there is no disclosure, teaching or suggestion that the laminate itself is a "clothes of dolls" or should be

wrapped to form clothes of dolls or would or could form a doll's skin as recited in Claims 6-9 and 13-14. Instead, the entire sentence, which provides the proper context, states that the laminate can be cut into a shape and size so that the laminate portion can be used as a constituent element of clothes of dolls – not as clothes or skin by itself. By definition, the fact that the laminate is only a constituent element means that the laminate itself, taken alone, does not constitute a doll's skin. At best, it can be a portion of or an attachment to a doll's garment – not a doll's skin.

As a consequence, neither Fig. 1 nor the paragraph spanning columns 19 and 20 of Yasuda disclose, teach or suggest a seamless doll's skin. In fact, by virtue of the fact that Yasuda teaches that the laminate is only a constituent portion of a doll or doll's skin, this inherently means that a doll's garment utilizing the laminate as a constituent element would not be seamless and would not be wrapped around a doll and/or form a skin. There would need to be some means to attach the constituent element, i.e., the laminate, which inherently would produce some type of seam.

Accordingly, the Appellants respectfully submit that Yasuda does not teach a seamless doll's skin, but that Yasuda teaches what would inherently be a portion of clothing for a doll's garment having a seam by virtue of application of the laminate of Yasuda as a constituent element of such clothes. Yasuda does not intend for the laminate to be a doll's skin, wrapped or otherwise, but only intends for the laminate to be a constituent part of the clothing so that it can be utilized as a decorative element. This is briefly explained at the top of column 20 in line 2. It is simply for appearance, not functional use.

Claims 6-11, 13-14 and 21 also call for a seamless doll's skin formed from an injection moldable thermoplastic elastomer in a molded shape to fit over at least a portion of a doll. The

Appellants note with appreciation the Examiner's helpful comments concerning injection molding at column 5 line 42. That full paragraph states the following:

The resin molded articles which can be used as a resin layer of the laminate include small pieces other than films and extruded or injection molded articles of any shape and size.

The above paragraph refers to injection molded articles of any shape and size. However, it states that the resin molded articles are used as a resin layer of the laminate. In other words, Yasuda teaches injection molding articles as part of a single layer and then using those injection molded articles as constituents of a laminate. Yasuda does not teach or suggest that his invention (i.e. the laminate) is injection molded. It clearly is not as a result of the teachings of the paragraph in column 5 at the beginning of line 40. As a consequence, there are utterly no teachings or suggestions to those of ordinary skill in the art to injection mold a seamless doll's garment based on Yasuda. Yasuda's references to injection molding are merely formation of injection molded articles that can be used as part of a layer. This is not the same as a teaching or suggestion to injection mold a seamless doll's skin. Therefore, the doll's skin or doll's garment of Yasuda fails to teach or suggest a seamless, molded elastomeric material. Yasuda accordingly does not apply to any of Claims 6–11, 13–14 and 21.

Further, in Yasuda, there is no indication that at least a portion of the doll is partially bendable or articulated and/or that the doll's skin is sufficiently flexible and elastic to bend at bending or articulation locations of the doll. Yasuda briefly mentions a laminate that can have fabrics bonded to the outermost resin layer to be effective for clothing for dolls. There is utterly no disclosure concerning a doll and/or the bendability or ability of the non-existent doll to be articulated. It inherently follows that there is no disclosure concerning the ability of the

“clothing for dolls” to be sufficiently flexible and elastic to bend with non-existing bending or articulation locations of a doll.

Claims 6-9 and 13-14 recite a “doll’s skin” that covers and is removed from a portion of the doll and transforms the doll into a different character or object. Yasuda fails to disclose this. This can readily be seen by reference to the Appellants’ figures, such as Figs. 7A, 7B and 7C. In those three figures, a doll is covered with a doll’s skin and is transformed into a different character or object. It is readily seen that the figure of Fig. 7A is completely covered in Fig. 7C and is a different character. This is in sharp contrast to merely wrapping a laminate over a portion of a doll in an attempt to provide an element of clothing.

Finally, there is utterly no disclosure in Yasuda concerning the heights or sizes of the dolls and, accordingly, there is nothing on this record that supports the rejection of Claims 7, 8 and 10, which recite a height range of above 8 cm to about 20 cm.

As a result of the failures of disclosure of Yasuda set forth above, the Appellants respectfully request that the rejection of Claims 6-11, 13-14 and 21 under 35 U.S.C. §103 be reversed.

Rejection of Claim 12 under 35 U.S.C. §103(a)

Claim 12 is rejected under 35 U.S.C. §103(a) over Yasuda in view of Fogarty. The Official Action dated April 7, 2005 admits that Yasuda does not disclose a garment having at least one integrally molded detail and turns to Fogarty to fill the gap. Fogarty does not cure the underlying deficiencies of Yasuda irrespective of whether Fogarty discloses an integrally molded detail. Assuming that Fogarty discloses integrally molded details on doll’s garments, the hypothetical combination with Yasuda would still not result in the subject matter of Claim 12.

Integrally molding a detail onto a laminate of Yasuda would still result in a laminate having seams and it would further fail to teach, disclose or suggest the claimed height range. Accordingly, even if one of ordinary skill in the art were to make the hypothetical combination of Fogarty with Yasuda, the resulting structure would still fail to teach or suggest the subject matter recited in Claim 12. Moreover, one skilled in the art would not have any incentive to make the combination. Yasuda discloses laminates adapted to have fabrics bonded to them. What motivation is there to have internally molded details that will be covered with cloth? The Appellants believe that there is no such motivation. Therefore, the rejection based on the hypothetical combination of Fogarty with Yasuda must fail. As a result of the arguments set forth above, the Appellants respectfully request that the rejection of Claim 12 under 35 U.S.C. §103(a) be reversed.

Rejection of Claims 1, 3-5 and 9 under 35 U.S.C. §103(a)

Claims 1, 3-5 and 9 are rejected under 35 U.S.C. §103(a) over Fogarty in view of Yasuda. Fogarty discloses doll's clothing in a number of pieces, such as hats, skirts, blouses and the like. However, Fogarty discloses clothes, not a doll's skin which covers and is removed from the doll and transforms the doll into a different character or object. Careful examination of the entire Fogarty text reveals that, in no instance, does the Fogarty doll's clothes transform it into a different character. The Fogarty doll, as shown in Figs. 11-13, for example, retains its base underlying character since the head and face, for example, are always visible and are the same.

Also, all of those dolls clothes as shown and described in Fogarty do not cover the doll. They only are placed over selected portions of the doll and do not cover it as is clearly shown in Figs. 7 and 8, for example, of the Appellants' drawings. There is utterly no disclosure that the

doll's skin covers the doll. At best, Fogarty discloses doll's garments which surround selected portions of the doll but, even when taken collectively, do not cover the doll as shown in Figs. 7 and 8 of the Appellants' drawings. In any event, even if the hypothetical combination of Fogarty and Yasuda were made, the resulting structure would still fail to teach or suggest a doll's skin that covers the doll as shown in Figs. 7 and 8 of the Appellants' drawings and transforms that doll into a completely different character or object.

Although Yasuda discloses various thicknesses in microns of various layers of the Yasuda laminate, there is utterly no disclosure concerning the wall thickness of the "clothing for dolls" in Yasuda. Moreover, the disclosure of Yasuda is so deficient that one of ordinary skill in the art could not even guess as to what the thickness of the skin might be inasmuch as Yasuda discloses that the Yasuda laminates can have fabrics such as woven fabric, knitted fabric, braid, nonwoven fabric, lace, mesh, bonded to the outermost resin layer thereof, to thereby have a soft texture and a unique appearance. No disclosure at all is given concerning the thickness of those materials. At best, some of those fabrics are said to have fibers having a thickness of 0.5 to 20 denier. However, this is in no way indicative of the thickness of the fabrics. Thus, one can only guess or speculate as to the thickness of the "clothing for dolls" disclosed in Yasuda.

Yasuda does not disclose that the garment has a wall thickness of 1 to 3 mm as recited in Claim 1, 3-5 and 9. Additionally, Yasuda does not provide any guidance concerning the thickness of the laminate or the thickness of the resin layers forming the laminate. However, Yasuda does provide a multiplicity of examples which specifically set forth the thickness of the individual layers comprising the laminate. Those thicknesses are set forth in the chart for the Examiner's convenience.

Example	Overall thickness (μm , or mm^{-3})
1	100
2	115
3	150
4	70
6	65
7	85
8	85
9	125
10	150
11	100
12	92
13	92
14	75
15	75
16	92
17	100
18	100
19	120
23	100
24	100

It is clear from these examples that the laminate thickness of Yasuda ranges between 65 μm all the way up to 150 μm . In sharp contrast, Claim 1 recites a wall thickness of 1 to 3 mm. The equivalent thickness is 1,000 μm to 3,000 μm . This is because the Yasuda laminate is for decorative purposes with no structural functionality.

There is a fundamental difference in thicknesses between Claims 1, 3-5 and 9 and Yasuda and there are no teachings, disclosure or suggestions in Yasuda to increase the thickness at all, much less increase the thickness to the thickness recited in Claims 1, 3-5 and 9. At a minimum, the claimed thickness is more than 6 ½ times larger than the thickness of the thickest Yasuda laminate. At the other end of the spectrum, the claimed range is over 46 times larger than that taught by Yasuda. One of ordinary skill in the art would not tend to increase the thickness of a laminate to make it easier to use on a doll assuming that the laminate was in fact a doll's skin. Logic suggests that removing the skin and reapplying it to a doll with legs and arms would only

be more difficult if the thickness were increased. Logic suggests that there would be no gain in the ease of playing with the doll and/or the doll's skin by increasing the thickness. It is well known that increasing thickness tends to make an item stiffer and less pliable relative to a thinner item.

As a consequence, the Appellants respectfully submit that Yasuda actually leads one of ordinary skill in the art away from the claimed wall thickness aspect of the invention. If one of ordinary skill in the art were to view the thickness teachings of Yasuda, one of ordinary skill in the art would tend to reduce the thickness to the level of Yasuda, not to increase the thickness to the claimed range, which is completely different from the taught thickness of the laminate of Yasuda. Thus, Yasuda teaches away from the claimed wall thickness. Hence, the resulting combination would still fail to teach or suggest the subject matter of Claims 1, 3-5 and 9.

The Official Action dated April 7, 2005 states that Fogarty does not disclose the specifics of the materials as recited in Claims 3-5. Hypothetically combining Yasuda with the long list of polymeric materials disclosed therein does not cure the deficiencies of Fogarty. Moreover, inasmuch as Yasuda discloses a laminate containing multiple layers with multiple types of materials, Yasuda provides at best a laundry list of polymeric components from at least two, if not more layers. Thus, one of ordinary skill in the art would be faced with the question as to which material from which layer to apply to Fogarty. There is nothing in Yasuda that provides teachings or suggestions to those of ordinary skill in the art to speculate as to which material from which layer of the laminate, if any, would be applicable to Fogarty. Accordingly, one of ordinary skill in the art would not make the hypothetical combination. As a consequence, the hypothetical combination is based on forbidden hindsight.

The Appellants respectfully request that the rejection of Claims 1, 3-5 and 9 under 35 U.S.C. §103(a) be reversed.

Rejection of Claim 15 under 35 U.S.C. §103(a)

Claim 15 is rejected under 35 U.S.C. §103(a) over Fogarty in view of Yasuda. The Official Action dated April 7, 2005 admits that Fogarty does not specifically provide a teaching of a synthetic polymer for the garment or the height range for the doll and looks to Yasuda to fill the deficiency. However, both of Yasuda and Fogarty fail to disclose, teach or suggest the claimed doll's height in the range of about 8 cm to about 20 cm. Accordingly, both Yasuda and Fogarty are non-enabling as prior art against Claim 15 and cannot support the rejection. As a result, the Appellants respectfully request that the rejection of Claim 15 under 35 U.S.C. §103(a) be reversed.

Rejection of Claims 16-18 under 35 U.S.C. §103(a)

Claims 16–18 are rejected under 35 U.S.C. §103(a) over Fogarty in view of Yasuda and further in view of Gross. Claim 17 was canceled and that portion of the rejection is moot.

The Official Action dated April 7, 2005 admits that neither Yasuda nor Fogarty disclose a doll articulated at the elbow and knee. The Appellants respectfully submit that hypothetically combining Gross with either or both of Fogarty and Yasuda fails to teach or suggest the subject matter recited in Claims 16 and 18. Gross does nothing to cure the deficiencies of Fogarty and Yasuda set forth above. Thus, Claim 16 remains patentable over and above Gross combined with the other references.

There is no disclosure at all in Gross concerning a modulus of elasticity. Thus, there is inherently no disclosure of the modulus of elasticity as set forth in Claim 18. Moreover, there is utterly nothing in Fogarty and/or Yasuda that teaches those of ordinary skill in the art to provide a seamless synthetic polymer garment having a 100% modulus of elasticity between 120 and 350KN/m². Careful scrutiny of the entirety of both documents reveals that there is not one word of disclosure on this point. Also, as previously discussed, the fact that material inherently has a modulus of elasticity does not in any way suggest to those of ordinary skill in the art that such a modulus of elasticity is of any importance, much less that it should be between 120 and 350 KN/m² as in Claim 15 or between 240 and 280 KN/m² in Claim 18. In fact, both references are so completely devoid of disclosure on this point that they are non-enabling for that subject matter. It simply does not exist in either of those references and in no way can be considered inherent, especially in view of the multiple layers disclosed by Yasuda. As a result, the Appellants respectfully request that the rejection of Claims 16 and 18 under 35 U.S.C. §103(a) be reversed.

Rejection of Claims 1, 7, 8, 10, 15, 16 and 20 under 35 U.S.C. §103(a)

Claims 1, 7, 8, 10, 15, 16 and 20 are rejected under 35 U.S.C. §103(a) over Kramer in view of O'Brian and either Gross or Wion. The Official Action dated April 7, 2005 admits that Kramer does not disclose an elastic injection molded thermoplastic elastomer doll's skin or garment and doll having articulated limbs as recited in Claims 1 and 15; the garment is sized to be fitted to and removed from a doll less than 8 cm in height as recited in Claim 7 and a play set comprising a doll wherein the doll is articulated at a joint selected from the group consisting of the shoulders, elbows, knees, neck, and hips as recited in Claims 15 and 16.

The Appellants respectfully submit that Kramer is utterly inapplicable to Claims 1, 7, 8, 10, 15, 16 and 20. Kramer fails to disclose, teach or suggest a doll's skin that is at least partially bendable or articulated which repeatedly covers and is removed from a doll and transforms the doll into a different character or object. Kramer also fails to disclose a through hole to accommodate passage of a doll's head or limb. Kramer further fails to disclose, teach or suggest a sufficiently flexible and an elastic material that bends at bending or articulation locations of a doll. All of the above features are specifically recited in Claim 1 and neither disclosed nor taught nor suggested by Kramer.

With respect to Claims 10 and 15, Kramer fails to disclose, teach or suggest the claimed height in a range of above 8 cm to about 2 cm and fails to disclose, teach or suggest a through hole to accommodate passage of a doll's head or limb and further fails to disclose, teach or suggest that the material is sufficiently flexible and elastic to bend at articulation locations of the doll.

Kramer is also inapplicable to independent Claim 20 since it fails to disclose, teach or suggest the claimed aspects of a through hole to accommodate passage of a doll's head or limb and fails to disclose, teach or suggest that it is sufficiently flexible and elastic to bend at bending or articulation locations of a doll.

Next, one of ordinary skill in the art would not hypothetically combine O'Brian, Gross and/or Wion with Kramer. Since the Kramer "clothing" is planar, there is utterly no incentive to employ the notion of articulated shoulders, elbows, knees, necks, hips and the like from the secondary references. There is utterly no need to have such articulation in the case of Kramer. Therefore, the Appellants respectfully submit that none of O'Brian, Gross and Wion would be combined with Kramer.

O'Brian has no through holes. Instead, O'Brian has a number of slots in the various garments that are friction fit around various portions of dolls. However, there is no through hole in the sense of the ordinary, well-accepted meaning of a through hole. Thus, even if one of ordinary skill in the art were to hypothetically combine O'Brian with Kramer, the resulting structure would still fail to disclose, teach or suggest the claimed through holes. Also, because of the requirement of having the friction fit of O'Brian, there would be a complete failure on the part of O'Brian to provide teachings or suggestions that would allow for both flexibility and elasticity to bend at bending or articulation locations of the O'Brian dolls.

With respect to Claim 10, O'Brian utterly fails to mention the range of heights of the dolls at all, much less the claimed range of heights. Kramer is similarly devoid of such disclosure. Accordingly, even if one of ordinary skill in the art were to hypothetically combine O'Brian with Kramer, the resulting garment would still fail to teach or suggest that aspect of Claim 10. The same can be said for Claims 15 and 16.

Further hypothetically combining Gross or Wion with either or both of O'Brian and Kramer would still fail to teach or suggest the above-mentioned features. Of course, this is all taken in the context that one of ordinary skill in the art would not make the hypothetical combination of O'Brian with Kramer in the first place inasmuch as there is utterly no incentive for one of ordinary skill in the art to put through holes into the clothes of Kramer inasmuch as the dolls and the clothes are all planar. As a result, the Appellants respectfully request that the rejection of Claims 1, 7, 8, 10, 15, 16 and 20 under 35 U.S.C. §103(a) be reversed.

Rejection of Claims 3, 4, 5 and 12 under 35 U.S.C. §103(a)

Claims 3, 4, 5 and 12 are rejected under 35 U.S.C. §103(a) over Kramer in view of O'Brian and either Gross or Wion and further in view of Yasuda. The Appellants have already provided compelling reasons why one of ordinary skill in the art would not make the hypothetical combination of O'Brian with Kramer and have also demonstrated that even if one of ordinary skill in the art were to combine Gross or Wion with O'Brian with Kramer, that the resulting structure would still fail to disclose, teach or suggest the subject matter of Claims 1, 7, 8, 10, 15, 16 and 20. Inasmuch as Claims 3, 4 and 12 depend directly or indirectly from Claims 1 and 10, the further hypothetical combination of Yasuda would still fail to teach or suggest the subject matter was cited in Claims 3, 4, 5 and 12. As a result, the Appellants respectfully request that the rejection of Claims 3, 4, 5 and 12 under 35 U.S.C. §103(a) be reversed.

Additional Arguments

The Appellants were the first to invent the subject matter of Claims 1, 3-16, 18, 20 and 21 and have licensed that subject matter to a well known toy manufacturer and enjoyed great commercial success, which is indicium of nonobviousness. Since the subject matter was licensed, this invention has revolutionized fashion play in small dolls and the licensee will have sold over \$440,000,000 worth of product around the world and over \$220,000,000 in the U.S. in five years by the end 2003. A chart of sales through 2004 is as follows:

<u>Year</u>	<u>Worldwide</u>	<u>USA</u>
1999	8	7.5
2000	30	15
2001	78	38

2002	127	62
2003	200	100
2004	172	95
Total	615	317.5

The above figures do not include sales of boy's figures to licensees other than the one mentioned above. To obtain the retail value of the above sales, it would be necessary to double or triple those figures (which are licensee's sales value). In other words, sales of product with molded elastic clothes that are the subject of the solicited claims have exceeded \$1 billion in five years at retail value worldwide.

Also, the product, sold under the name "Fashion Polly" (under the Polly Pocket brand), was awarded the coveted Toy of the Year by Mattel (the world's largest toy company). The product has single-handedly rescued a brand name (Polly Pocket) from the verge of extinction in 1999 and turned it around to be the best selling small doll in the world.

The undeniable commercial success of the product that is the subject of the license is because of the subject matter of Claims 1, 3-16, 18, 20 and 21 and not due to inordinate quantities of advertising. In fact, the amount of advertising spent on the product is below the "spend to sales ratio" of competitive toys. Also, unlike many of its peer products in boy's and girl's toys, it has not been the subject of any cartoon or other entertainment support along with the usual merchandising campaigns (e.g., like a Disney property, or Barbie). In spite of below average expenditure of funds in marketing the product, it has been a resounding success and has spawned many attempts by others to enjoy the financial rewards provided the Appellants' advance in this art. There is no clearer proof of the non-obviousness of this product as set forth

by the commercial success described above and the overt copying by others. A copy of a Declaration of one of the inventors that is already on the record is attached as Appendix B.

The Appellants also note that a wide variety of hypothetical combinations of different prior art disclosures have been hypothetically combined to reject the solicited claims. However, those hypothetical combinations have either not been appropriate or, even if made, still fail to teach or suggest the invention of Claims 1, 3-16, 18, 20 and 21. Also, they rely on the notoriously tempting concept known as "hindsight." This technology is not especially complicated and is, therefore, susceptible to its use. However, hindsight is strictly forbidden, irrespective of the relative complexity of Claims 1, 3-16, 18, 20 and 21.

The Court of Appeals for the Federal Circuit has decisively confirmed this point in its recent decision *In re Fritch*, 23 U.S.P.Q. 2d, 1780 (Fed. Cir. 1992). The CAFC has clearly prohibited hindsight:

Here, the Examiner relied upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." 23 U.S.P.Q. 2d at 1783-1784.

The foregoing discussion is binding with respect to this application. It is impermissible to pick and choose portions of a disclosure and use hindsight reconstruction to reject the Claims 1, 3-16, 18, 20 and 21.

The Appellants respectfully request that the rejection of Claims 1, 3-16, 18, 20 and 21 accordingly be reversed as to all claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'T. Daniel Christenbury', written over the printed name.

T. Daniel Christenbury
Reg. No. 31, 750
Attorney for Appellants

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Appendix – Listing of Claims

1. (Previously Presented) A seamless doll's skin comprising a seamless, injection molded elastomeric material sized and shaped to approximate the size and shape of at least a portion of a doll that is at least partially bendable or articulated which repeatedly covers and is removed from the doll and transforms the doll into a different character or object, has a wall thickness from 1 to 3mm, has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll.
2. (Cancelled)
3. (Original) The skin of claim 1 wherein the elastomeric material is a synthetic polymer.
4. (Original) The skin of claim 3 which is a copolymer.
5. (Previously Presented) The skin of claim 4 wherein the copolymer is selected from the group consisting of one of the following: ethylene vinyl acetate copolymer, styrene-butadiene-styrene, styrene-isoprene-styrene, styrene-diene, styrene-isoprene-butylene block copolymers containing mineral oil, branched styrene copolymer, styrene butadiene, styrene-butadiene triblock, styrene-isoprene-styrene linear block polymer, styrene-butadiene radial block copolymer, butadiene-styrene copolymer.

6. (Previously Presented) A doll's skin comprising a seamless, injection molded elastomeric material which covers and is removed from at least a portion of a doll that is at least partially bendable or articulated and transforms the doll into a different character or object, wherein the elastomeric material has a 100% modulus of elasticity between about 120 and 350KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll.

7. (Previously Presented) The skin of claim 1 wherein the garment is adapted in size to be fitted to and removed from the doll having a height of less than about 8cm.

8. (Original) The skin of claim 2 wherein the garment is adapted in size to be fitted to and removed from the doll having a height of above 8cm to about 20 cm.

9. (Original) The skin of claim 1 in a form selected from the group consisting of animal, human, monster, super hero, robot, and cartoon character.

10. (Previously Presented) A seamless doll's garment comprising a seamless, injection molded elastomeric material having a molded shape to repeatedly fit over and removed from a doll having a height in the range of above 8cm to about 20cm, has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at articulation locations of the doll.

11. (Previously Presented) The doll's garment of claim 10 wherein the elastomeric material is a synthetic polymer.

12. (Previously Presented) The doll's garment of claim 11 further comprising at least one integrally molded detail.

13. (Previously Presented) A doll's skin comprising a seamless, injection molded elastomeric material which covers and is removed from at least a portion a doll that is at least partially bendable or articulated to transform the doll into a different character or object, and wherein the elastomeric material has a 100% modulus of elasticity between 120 and 350 KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll.

14. (Previously Presented) The doll's skin of claim 13 wherein the elastomer material has a 100% modulus of elasticity between 240 and 280KN/m².

15. (Previously Presented) A play set comprising, in cooperative combination, a doll that is at least partially bendable or articulated and having a height in the range of 8 cm to about 20 cm, donned and fitted with a seamless synthetic polymer injection molded garment which removably encloses around at least a part of the doll and is adapted to be removed, dressed and refitted again to the doll wherein the synthetic polymer has a 100% modulus of elasticity between about 120 and 350KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll.

16. (Original) The play set of claim 15 wherein the doll is articulated at one or more of the following: shoulders, elbows, knees, wrists, ankles, neck, head and hips.

17. (Cancelled)

18. (Previously Presented) The play set of claim 15 wherein the synthetic polymer has a 100% modulus of elasticity between about 240 and 280KN/m².

19. (Cancelled)

20. (Previously Presented) A seamless doll's garment comprising a seamless, injection molded elastomeric material sized and shaped to approximate the size and shape of at least a portion of a doll that is at least partially bendable or articulated which is repeatedly fitted over and removed from the doll, has a wall thickness from 1 to 3 mm, has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll.

21. (Previously Presented) A seamless doll's garment comprising a seamless, injection molded elastomeric material sized and shaped to approximate the size and shape of at least a portion of a doll that is at least partially bendable or articulated which is repeatedly fitted over and removed from the doll, wherein the elastomeric material has a 100% modulus of elasticity between 120 and 350 KN/m², has a through hole to accommodate passage of a doll's head or limb(s) and is sufficiently flexible and elastic to bend at bending or articulation locations of the doll.



APPENDIX B

Copy of Declaration of Mr. Casey William Norman

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit	: 3712	Customer No.:	035811
Examiner	: Faye Francis		
Serial No.	: 09/844,322		
Filed	: April 26, 2001		
Inventors	: Casey William Norman	Docket No.:	1391-CON-00
	: Torquil Patrick Alexander Norman	Confirmation No.:	1969
Title	: DOLL'S CLOTHING		

Declaration of Mr. Casey William Norman

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Casey William Norman, declare that I reside at Thornhill, Withington Road, Andoversford, Gloucestershire GL54 4LL, United Kingdom. I worked for the UK company Bluebird Toys plc for seven years, the last four of those as Development Director. Subsequently I founded the company Genie Toys plc in 1996, in which I currently serve as its Managing Director.

I am a co-inventor of the above-identified Application. I am familiar with the Official Action dated September 24, 2003 and have thoroughly studied the prior art used to reject the claims in the Application. As a result of my long experience in the toy industry, I can unequivocally state that the prior art utilized to reject the claims in the Application does not render those claims obvious. Rejection of the claims is based on the use of hindsight, not actual teachings or suggestions gleaned from the prior art.

The subject matter of the claims in this Application has been commercialized. That commercialization has been a resounding success beyond my expectations. That commercial success resulted from the inventive features of this invention and not from advertising or promotional efforts beyond standard efforts consistent with industry norms. In other words, products that have been commercialized based on the subject matter claimed in this Application have enjoyed commercial

success far beyond what could reasonably be expected compared to other toy products with the same investment in advertising and promotional dollars.

The subject matter that is claimed in this Application has been licensed to a well known toy manufacturer. That subject matter has revolutionized fashion play in small dolls. As a result, the licensee has sold over \$440,000,000 of product around the world and over \$220,000,000 in the United States within the last five years (calculated through the end of this year). A Table indicating the sales for years 1999 through 2003 is set forth below.

<u>Year</u>	<u>Worldwide</u>	<u>USA</u>
1999	8	7.5
2000	30	15
2001	78	38
2002	127	62
2003	200	100
Total	443	222.5

It is important to note that the sales figures set forth above do not include sales of boys' doll figures to licensees other than the licensee mentioned above. Also, to obtain the retail value of the above sales figures, it would be necessary to increase substantially the numbers in the Table. (Those numbers would be the licensee's reported sales value.) Thus, sales of product within the scope of the claims of this Application may have exceeded one billion dollars in five years at retail value worldwide.

The product mentioned above has been sold under the name "Fashion Polly" (under the Polly Pocket brand). This product was awarded the "Girl's Inventor Product of the Year" by Mattel, which

is the world's largest toy company. This is an important award in the industry and is highly sought after. The features of the product, the way in which it has transformed the small dolls segment of the industry and the rapid increase in sales indicate the importance of the advance this invention has brought about. In fact, this single product innovation has rescued a brand name (Polly Pocket) from the verge of extinction in 1999. Polly Pocket is now the bestselling small doll in the world as a consequence of the molded elastic clothes product that is the subject matter of the claims of this Application.

As I noted above, the amount of advertising and promotional efforts spent on the product is actually below the "spend-to-sales ratio" of competitive toys. Further, it is different from many peer products in girls and boys' toys because it has not been the subject of any cartoon or other entertainment support or typical merchandising campaigns (for example, such as are typical of Disney properties).

Finally, one of the best indicators of the advance made by this product is the fact that the product is now being copied by other toy manufacturers in an effort to share in the financial success brought about by this product.

The undersigned declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and thus such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 16th December 2003

Casey William Norman
Casey William Norman, co-inventor